IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Crl.MC.No. 2521 of 2005()

CRIME NO.251/2003, S.H.O KADIROOR POLICE STATION
C.C.75/05 ADDL.CHIEF JUDICIAL MAGISTRATE, THALASSERY

PETITIONER: ACCUSED NO.1

P.KUNHAMMED, PACHOLAKANDIYIL VEEDU,
MUTHIYANGA, KANNUR DISTRICT.

BY ADV. SRI.K.V.SOHAN

RESPONDENTS: DEFACTO COMPLAINANT & STATE

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1. K.P.SAFOORA, W/O.P.KUNHAMMED,
VADUKKAL PARAMBATH VEEDU,
KOTTAYAMPOIL, KADIRUR, KANNUR DISTRICT.

2. STATE, REPRESENTED BY S.H.O.,
KADIRUR POLICE STATION, KANNUR DISTRICT,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2521 of 2005

Dated this the 22nd day of June, 2007

O R D E R

Petitioner is the 1st accused in a prosecution, inter alia, under Section 498 A I.P.C. Proceedings were initiated on the basis of a private complaint which was referred to the police under Section 156 (3) Cr.P.C for investigation. Cognizance was taken on the basis of the final report submitted by the police. There were altogether 5 accused. Accused 2 to 5, the relatives of the petitioner, faced trial. On evidence, they were found entitled to acquittal. Accordingly, they have been found not guilty and acquitted.

2. The petitioner has come to this Court with a prayer that the proceedings against him may be quashed. What are the grounds ? Two grounds are raised. The first ground is that the matter has been settled between the parties. The 1st respondent/the defacto complainant has not appeared before the court. She has not reported settlement or compromise. There is nothing available on record to instill the requisite satisfaction in the mind of the Court that the matter has been settled and the defacto complainant has compounded the offence alleged against the petitioner. Acquittal of the co-accused can be of no avail because it does not reveal that such acquittal was on the basis of any compromise. Of course, the petitioner has produced the photocopy of an alleged agreement as Annexure-III. It will be too much to expect this Court to act upon such copy produced

to jump to the conclusion that the 1st respondent/the defacto complainant has compounded the non compoundable offence punishable under Section 498 A I.P.C.

3. The second contention, that the petitioner is entitled for quashing of proceedings on the ground that the co-accused have been acquitted cannot obviously stand. The complicity of the petitioner, who stands on an entirely different footing in so far as the allegations of matrimonial cruelty are concerned, did not arise for consideration at all before the learned Magistrate when the case against accused 2 to 5 was taken up, considered and disposed of on merits.

4. If this Court were satisfied that there has been a harmonious settlement of the dispute, the dictum in **B.S.Joshy v. State of Haryana** [A.I.R (2003) SC 1386] would have been invoked to bring this proceedings to premature termination. Number of opportunities has been granted, but composition is not formally reported to this Court. In these circumstances, I am of the opinion that this Court cannot act on the alleged settlement and composition which is not spoken to or confirmed by the 1st respondent/the defacto complainant, to quash the proceedings initiated against the petitioner.

5. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-